

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CENTRAL PRODUCE CORP.,

Plaintiff,

- against -

34-18 M&M CORP. t/a MET FRESH
SUPERMARKET, FRANK'S CABALLITO #2
MARKET PLACE, INC. t/a SUPER PIONEER
MARKET PLACE and FRANK RODRIGUEZ,

Defendants.

MEMORANDUM
AND ORDER

17-cv-3841 (LDH) (RLM)

LASHANN DEARCY HALL, United States District Judge:

On June 27, 2017, Plaintiff Central Produce Corp. filed a complaint against Defendants 34-18 M&M Corp. t/a Met Fresh Supermarket ("Met Fresh"), Frank's Caballito #2 Market Place, Inc. t/a Super Pioneer Market Place ("Pioneer") (together the "Corporate Defendants"), and Frank Rodriguez alleging that Defendants failed to pay for wholesale quantities of produce sold to Defendants by Plaintiff between February 9, 2015 and May 19, 2017. Plaintiff alleges that, despite repeated demands, \$154,454.50 remains unpaid in violation of the Perishable Agricultural Commodities Act, (PACA), as amended, 7 U.S.C. § 499a, *et seq.*

Defendants failed to answer or otherwise defend themselves in this matter and defaulted, as recorded by the Clerk of the Court on November 17, 2017. (*See* Clerk's Entry of Default (Nov. 17, 2017) ECF No. 12.) On November 17, 2017, Plaintiff moved for default judgment, and, on December 11, 2017, the Court referred Plaintiff's motion to United States Magistrate Judge Roanne L. Mann for a report and recommendation. (ECF Nos. 13, 15, 26.)

On July 9, 2018, Magistrate Judge Mann issued a Report and Recommendation (the “R&R”), wherein she recommended that Plaintiff’s motion for default be granted in part and denied in part. Specifically, the R&R recommended that the Court enter default judgment against Defendants for violation of PACA’s trust provision (as well as common law breach of contract), and hold the Corporate Defendants jointly and severally liable for a total of \$212,096.86. In addition, the R&R recommended that the Corporate Defendants be adjudged jointly and severally liable for an additional \$75.49 for each day after January 8, 2018, until judgment is entered. As to Defendant Rodriguez, however, the R&R recommended that he be held jointly and severally liable with the Corporate Defendants for the sum of \$208,764.72, plus \$74.84 for each day between January 8, 2018 and entry of judgment, because he is not liable for breach of contract in relation to Invoice 484.

The parties were given until July 26, 2018, to file objections to the R&R, and the parties were instructed that “[f]ailure to file objections in a timely manner may waive a right to appeal the District Court order.” (R&R at 22.) To date, no objections have been filed. A district court is not required to review the factual or legal conclusions of a magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985). Instead, when no objections are filed, “the district court need only satisfy itself that there is no clear error on the face of the record.” *Estate of Ellington ex rel. Ellington v. Harbrew Imps. Ltd.*, 812 F. Supp. 2d 186, 189 (E.D.N.Y. 2011) (quoting *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citations omitted)).

Accordingly, the Court has reviewed the R&R for clear error. Finding none, the Court therefore adopts the R&R in its entirety as the opinion of the Court.

Dated: September 10, 2018
Brooklyn, New York

SO ORDERED:

/s/LDH
LASHANN DEARCY HALL
United States District Judge